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September 25, 1996

By Fax and Express Mail

Mary Cottrell, Secretary
Commonwealth of Massachusetts
Department of Public Utilities
100 Cambridge Street, 12th Floor
Boston, Massachusetts 02202

RE: *Boston Gas Company*, D.P.U. 96-50
Initial Brief of The Marketer Group

Dear Ms. Cottrell:

Attached for filing in the above-referenced case, please find an original and 15 copies of the Initial Brief of Direct Energy Marketing, Inc., Eastern Energy Marketing, Inc., ERI Services, Inc., Keyspan Energy Services, Inc., PanEnergy Trading & Market Services, LLC, and UtiliCorp United, Inc. (together, The Marketer Group). We have also included a copy of this filing on disk. A copy of this Initial Brief was faxed to you today.

Thank you for your attention to this matter.

Sincerely,

/s/

Gregory K. Lawrence

Counsel For
The Marketer Group

Enclosure
cc: Boston Gas (by fax and express mail)
Service List (by express and messenger)
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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

BOSTON GAS COMPANY

D.P.U. 96-50

INITIAL BRIEF OF
THE MARKETER GROUP

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UtiliCorp United, Inc.

Dated: September 25, 1996
Washington, D.C.

Before the
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Boston Gas Company, D.P.U. 96-50

INITIAL BRIEF OF
THE MARKETER GROUP

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Before the
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

***Boston Gas Company,* D.P.U. 96-50**

INITIAL BRIEF OF THE MARKETER GROUP

The following is the Initial Brief of Direct Energy Marketing, Inc., Eastern Energy Marketing, Inc., ERI Services, Inc., Keyspan Energy Services, Inc., PanEnergy Trading & Market Services, LLC, and UtiliCorp United, Inc. (together, The Marketer Group), concerning the proposed transportation service and related tariffs, terms and conditions, and rates and charges of Boston Gas Company (Boston Gas) submitted to the Massachusetts Department of Public Utilities (Department) for approval in the above referenced proceeding.

INTRODUCTION

The Marketer Group applauds Boston Gas for a forward-thinking unbundling proposal generally, as well as for taking a bold and significant step to exit the merchant function and provide unbundled services for its customers, commercial and residential alike. Boston Gas' voluntary initiative to exit the merchant function is on the forefront of unbundling nationally, and Boston Gas is headed in the right direction toward an unbundled and competitive market, for the ultimate benefit of gas consumers in the Commonwealth.

However, as described in detail below, one aspect of Boston Gas' proposal, the mandatory capacity and assignment of Boston Gas' upstream Canadian supply obligations, creates a significant risk that the entire restructuring program will prove uneconomic and unworkable program in the first instance, thus severely jeopardizing the hard work Boston Gas has undertaken thus far. Although we make other important recommendations necessary to enhance the operations of Boston Gas' overall program and ensure its success (such as cost-based and optional availability of on-system assets, enhancements to Boston Gas' standards of conduct, and streamlined customer sign-up procedures, among several other recommendations), the proposed mandatory assignment of capacity and supply to converting customers is the *critical* element of Boston Gas' overall proposal that severely limits customer choice and flexibility to the detriment of the very competitive market for supply that Boston Gas hopes to achieve.

As discussed below, The Marketer Group recommends, among other things, that Boston Gas adopt a voluntary upstream capacity release allocation method similar to that proposed by the Division of Energy Resources (DOER) and, at the very least, eliminate the constraining requirement that Customers converting to transportation be required to take a *pro rata* portion of Boston Gas' Canadian supply obligations. These recommendations, as well as others described in detail below, are made with one goal in mind — to bring true customer choice and the benefits of competition to Boston Gas' customers — a goal we believe that Boston Gas, other parties, and the Department share.

We note that The Marketer Group has been an active participant in settlement discussions over the past months and will continue to work closely with Boston Gas an other participants to resolve certain fundamental issues in this case. Our goal is, and always has been, in order to arrive at the best unbundling program possible for Boston Gas and its customers — an enhanced program that could become the unbundling model for the Commonwealth, if not other jurisdictions. We respectfully request that the Department adopt the following recommendations.

▸ BOSTON GAS' PROPOSED MANDATORY ASSIGNMENT OF UPSTREAM PIPELINE AND STORAGE CAPACITY AS WELL AS CANADIAN SUPPLY DEFEATS THE PURPOSE OF CUSTOMER CHOICE AND UNBUNDLING.

Boston Gas proposes that non-residential sales customers of record as of July 31, 1996 will be allowed to choose their supplier, provided, however, that the converting Customer must also take a *pro rata* allocated share of Boston Gas' upstream pipeline and storage capacity (assigned based on geographic location), to be assigned to its marketer or aggregator. Exhs. BGC 73 and 74 at § 11.1. Boston Gas states that this capacity will be allocated based on the customer's average daily use during the peak month in 1995-96, through a pre-arranged release at posted maximum tariff rates. *Id.* The assigned capacity will be subject to recall rights and forfeiture provisions; the actual capacity share does not travel with the Customer or its Supplier. *Id.* at § 11.3; Tr. Vol. 5 at 112-115. Moreover, Boston Gas proposes that Customer must also take assignment of a *pro rata* portion of expensive Canadian supply contracts related to Boston Gas' capacity on Iroquois Pipeline in order to be eligible to choose suppliers. Exhs. BGC-1, at 9-14; BGC-73 and 74, at § 11.1.

- **Boston Gas' Mandatory Assignment Proposal Defeats The Purpose Of Customer Choice — Boston Gas Must Provide For Mandatory *Availability* of Upstream Capacity Sufficient To Meet The Customer's Peak Requirements, Without The Requirement That The Customer Take That Capacity.**

As Boston Gas acknowledges by the very nature of its unbundling proposal, if the benefits of the more open markets promised by FERC Order No. 636 are to be flowed through to Boston Gas' customers, its consumers must have the ability to choose suppliers. BGC-1 at 5-10; Exhs. TMG-26 and TMG-45. In order for open-access to be meaningful, consumers must be able to purchase both natural gas and the means to get that gas to their burnertip on an unbundled basis through a competitive market and in the appropriate mix to meet their specific energy needs. Those means must include *access* to both firm upstream transportation and storage in the necessary proportions. As explained herein, however, The Marketer Group strongly opposes the *mandatory* nature of Boston Gas' capacity assignment regime. Exh. TMG-45.

Before turning to why mandatory assignment should be rejected, we first hasten to note that Boston Gas' proposal does recognize two critical initial requirements for a successful unbundling program:

- Customers must have access to reliable, firm upstream pipeline and storage capacity;
- The Customer must have access to upstream capacity sufficient to transport the Customer's peak day requirements on a firm basis, *i.e.*, the high monthly average day (HMAD).

Exh. BGC-1, 9-14. The ability to secure access to these important assets in the right proportions should not be overshadowed by our disagreement with Boston Gas as to who determines what is the "right proportion."

Our disagreement with Boston Gas is simple: In order to give consumers real choices and opportunities, they must have the ***option*** to take a release from the LDC equal to their peak-day demands. They must also be given the option ***not*** to take the capacity. Boston Gas' proposal fails to give Customer's this fundamental choice.

Essentially, Boston Gas' mandatory capacity assignment forces converting Customers to take a *pro rata* capacity share regardless of the Customer's load profile and regardless of whether the Customer needs or wants the capacity (and associated costs) in order to meet its energy needs. Such a *mandatory* assignment severely constrains the Customer's flexibility to operate in the marketplace to secure the appropriate mix of supply, long- and short-haul pipeline capacity, and upstream storage, from several competing marketers. Indeed, these marketers have the ability to offer to each customer their own mix of supply and capacity assets to serve the Customer in an optimal manner, and, after all, what is the purpose of unbundling other than to allow Customers to utilize all available options to serve their needs? Clearly, the participants in this proceeding should not be going through all this effort simply to have to duplicate what Boston Gas does today, in cookie-cutter fashion, only in smaller pieces.

Making matters more difficult, capacity will be assigned on a *pro rata* basis, with portions of upstream capacity assigned from many different Boston Gas contracts of varying terms. This "slice" approach further reduces the ability of the marketer and/or Customer to deal its assigned capacity in the marketplace and to attempt to improve — *e.g.,* through trading of capacity on the release market — upon the constraints imposed through the proposed mandatory regime. Tr. Vol. 19, at 55, 77-78, 164.

In short, absent elimination of the proposed mandate to take upstream capacity, the benefits of competition will likely be lost in one initial blow. Customer choice of what assets to purchase in order to secure and deliver supplies is ***the key component*** of an unbundling program. By making upstream capacity assignment mandatory, this key component of the Customer's ability to choose and thereby lower its costs and tailor its services is taken away, leaving the customer only the hope that its supplier can beat Boston Gas' purchase price for the commodity. In essence, mandatory assignment forces suppliers into Boston Gas' shoes, rather than allowing the creative forces of the market to tailor services to what each customer desires.

Obviously, forcing upstream capacity on customers that wish to avail themselves of unbundling essentially is contradictory. Unbundling means having the choice to take what you need, not being saddled with what you do not need. Customers should not be forced to purchase upstream capacity from Boston Gas. Customers want — and should be given — the freedom to choose the level and type of services to meet their energy needs. This can only be achieved through a competitive marketplace. Some customers want interruptible service, others may want firm service; others still may want capacity offering something in between interruptible and firm service (capacity may have different levels of "firmness" depending on the recall provisions), but all should have the fundamental ability to make these choices.

- **Some Perspective: FERC Order No. 636**

A brief step back for some perspective may be helpful concerning Boston Gas' proposed mandatory regime. One of the Federal Energy Regulatory Commission's (FERC) paramount goals under its Order No. 636 regulatory initiative was to promote cost efficiency within the industry by allowing customers of interstate pipelines to purchase unbundled services — separately-stated and priced transmission, storage, and gas supplies — from their vendor(s) of *choice* and to use those services in a manner that best meet the customers' individual needs. This regulatory goal was to be achieved by permitting interested parties to acquire "released" interstate pipeline capacity — capacity that was to become more readily available through a uniform capacity release mechanism and market — from many different holders of pipeline capacity. In the same vein, FERC guaranteed that these parties would be able to use this capacity *in the manner that best suited their needs*, first by permitting such parties to purchase released capacity at *different amounts and levels* of reliability (recallability), and second, by establishing a regime of flexible receipt and delivery points rights[1] that allowed nomination and delivery rights to numerous different receipt and delivery points (and, importantly, to different supply sources).[2]

By permitting gas consumers the freedom to pick and choose the least-costly supply sources and upstream capacity (consistent with their desired level of reliability), FERC guaranteed that gas customers would be able to minimize their costs and maximize their service, while at the same time, enhanced the overall economic efficiency of the gas market. This lesson applies to the instant case as well.

- **The Specter of Stranded Costs Is Speculative And Fails To Provide Adequate Support For A Mandatory Capacity Assignment Regime.**

Much of the reasoning behind Boston Gas' mandatory approach to capacity allocation is based on the elimination of its risk and exposure to perceived stranded capacity costs. *See, e.g.*, Exh BGC-118, 1-30.

Equally obvious to the need for choice as to whether to take a release of upstream capacity is the fact that, if the customers who do not need upstream capacity convert and leave the upstream capacity "behind" with Boston Gas, something must happen to that capacity. Boston Gas essentially assumes that this outcome will be a stranded cost and that the only way to solve this perceived problem is to assign on a mandatory basis, *pro rata* blocks of capacity to converting Customers.

This is a factually incorrect assumption. Boston Gas has apparently failed to recognize that there are many other means to avoid stranding, means that have worked elsewhere and, in all likelihood, are probably already at work in the Commonwealth. For example, to the extent

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1 We discuss the marketer's need for flexible receipt and delivery points below.

2 In this discussion, it is critical the Customers have access and supply paths to a variety of supply basins through any capacity allocation system, and not simply the most expensive or otherwise unattractive supply basins. This can be accomplished by permitting access to a variety of actual supply paths or through an credit/surcharge mechanism that averages costs among Customers.

that Boston Gas has extra capacity as a result of *true* unbundling, Boston Gas could release the capacity into the market place.[3] The capacity that is presently being used to serve Massachusetts markets could be used to serve other markets from Texas to Canada. Moreover, any potential stranding will also be mitigated, if not eliminated entirely, by load growth. The point is that capacity more than likely will not be stranded; the market place will find a use and pay for that capacity.[4]

- ***Any Stranded Costs Claimed by Boston Gas For Recovery Must Be Mitigated and Demonstrable, Rather Than Automatically Passed-Off To Customers Through a Mandatory Assignment Regime.***

Boston Gas has incorrectly reversed the process: The Marketer Group's experience to date with unbundling has been that there are few, if any, stranded costs associated with upstream capacity. Proceedings should be convened to address stranded capacity costs, *if and when they have accrued*. Of course, in any such proceeding, Boston Gas must be required to prove up stranded costs and to include the impact of bundled off-system sales — where there is no cap on the margin that can be made. Any such proceeding must also consider whether Boston Gas has attempted to mitigate any net stranded costs sufficiently. *See*, *e.g.*, Exh. DOER-71, at 15-19; Tr. 19 at 59-60. Moreover, the capacity may have been imprudently acquired in the first instance, raising further doubts concerning cost recovery.

First and foremost in this investigation must be whether Boston Gas has made adequate efforts to release the capacity on the open market. Other things to consider should include the impacts of load growth and Boston Gas' opportunities to relinquish capacity to the market. Moreover, to allow further Boston Gas the opportunity to mitigate any potential stranded costs,

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[3] We discuss this "bidding" option in greater detail below.

[4] We note that the Federal Energy Regulatory Commission (FERC), has issued a Notice of Proposed Rulemaking, Docket No. RM96-14-000, proposing among other things to lift the maximum tariffed rate price cap on capacity releases. The FERC's proposal is slated to be tested this winter through an Experimental Program, Docket No. RM96-14-001 (Boston Gas has filed an application to participate in this pilot program). As part of its NOPR and proposed Experimental Program, FERC has acknowledged that a competitive market exists for capacity releases.

Boston Gas should allow a converting customer to give notice of its intention to convert in advance of an election not to take released capacity. In this way, Boston Gas could seek to shed capacity, or would realize sufficient load growth to absorb the capacity. In any event, if Boston Gas reacquires firm capacity that it otherwise has the right to shed, it should be precluded from claiming any stranded cost recovery with respect to the amount of capacity that it could have shed.

In short, Boston Gas has correctly recognized the importance of a capacity access to Customers but then goes too far, based on the speculative potential for stranded costs, by requiring the mandatory take of released capacity. The Department should not allow Boston Gas to impose this requirement, and, instead, require Boston Gas to replace it with a "mandatory-availability, optional-take" program, as proposed by the Division of Energy Resources (DOER) and discussed herein. *See*, *e.g.*, Exh DOER-71, at 1-19; Tr. Vol. 19, at 74, 97, 161; Exh. TMG-45.

- **For The Same Reasons, The Mandatory Assignment Of Canadian Supply With The Mandatory Assignment of Capacity Defeats Customer Choice, Is Bad Public Policy, And Therefore Must Be Rejected.**

The fundamental infirmities of Boston Gas' mandatory capacity assignment regime are magnified by Boston Gas' requirement that a converting Customer take a *pro rata* share of Boston Gas' long-term Canadian supply contracts with its pipeline and storage share assignment. Specifically, Boston Gas proposes that the Supplier accept Boston Gas' supply contracts with Imperial Oil Resources, Alberta Northeast, Ltd., and Boundary Gas, Inc., bundled and delivered at the U.S. Canadian border, with matching shares of its domestic capacity to bring the supply to the citygate, at maximum tariff rates. Exhs. BGC-73 BGC-74 at § 11 *et seq.*; Tr. Vol. 20, at 60-61; Exh. IOR-1. Boston Gas acknowledges that these are expensive contracts in its portfolio. Tr. Vol. 20, at 61.

Again, in addition to severely limiting the Customer's market options by forcing possibly unwanted capacity on the Customer, Boston Gas then further reduces Customer choice to an unworkable level by forcing Customers to take supply they may not want. The purpose of unbundling and the introduction of competition into the natural gas market is to allow customers to seek out and *choose* less costly and/or more tailored supply and transportation to deliver that supply, not to bind them to Boston Gas' existing supply contracts. Suppliers cannot simply step into Boston Gas' shoes if they are to offer the gas consumers of the Commonwealth new viable choices.

By way of analogy, in an open marketplace, car purchasers needing a 4-wheel drive truck for hauling are first and foremost not required by a dealership to purchase a black 2 seater Porche (convertible, of course), and then required — for the foreseeable future — also to buy premium gas from a specific gas station. Such an arrangement defeats a Customer's right to choose and thus severely hampers the workings of an open marketplace and the benefits it provides. Moreover, Boston Gas has failed to make an adequate showing that it has the legal or operational ability to divide up its Canadian supply contracts into ever smaller shares for assignment.

As with the mandatory capacity assignment regime, if Boston Gas seeks to eliminate its risk and perceived stranded supply costs exposure, it must do so based on actual, demonstrable costs arrived at *after* Boston Gas has made reasonable efforts to mitigate those costs. For example, Boston Gas could bid the entire Canadian supply out to the marketplace now, use the supply for balancing and peaking services, or use the supply to provide service to remaining sales customers as Boston Gas exits the merchant function, then bidding out the remainder of the contract, after reforming them to market levels.

At the federal level, when pipelines abandoned their merchant functions during the Order No. 636 transition, myriad ways for dealing with stranded supplies were utilized, and none involved forced assignment. Indeed, this problem was handled creatively on some pipelines: Supply arrangements were bid out to the market. If, for example, there was a 10-year $3.00 gas contract and the market could only support $2.50 at the time of unbundling, a supplier might be willing to bid $2.70 for the 10 year supply, based on its expectation of rising prices. Then, only the remaining 30 cents would be a transition cost — to be spread over throughput — not the entire $3.00.[5] And, importantly, under this construct, customers who only wanted to buy supplies under one-year contracts could do so.

If the Department is inclined to accept Boston Gas' mandatory *capacity* assignment regime proposal, it must not allow Boston Gas to heap additional constraints on Customer choice through the assignment of *supply* contracts — supply Customers should be allowed to obtain in the competitive marketplace. In fact, regardless of the capacity allocation method mandated by the Department in this case, the forced take of Boston Gas' supply obligations without at the very least some concrete attempt to mitigate the costs associated with that supply is directly contrary to the concept of Customers seeking alternative supplies in the competitive marketplace and, thus, contrary to Department policy and Boston Gas' stated unbundling goals.[6] Moreover, we are unaware of any state in the country where a state regulatory commission has approved the assignment of LDC supply obligations as part of a state unbundling and capacity release program. The Department should not be the first in the nation to approve such an ill-advised proposal.

- **Boston Gas Should Be Required To Adopt A Voluntary Capacity Release and Auction Approach Similar That Proposed by the Division of Energy Resources.**

As outlined above, the Department should reject Boston Gas' mandatory assignment regime and require Boston Gas to adopt a *mandatory availability, with optional take* capacity allocation system. This is a fair and equitable way to allocate capacity while consistent with

[5] Other pipelines employed so-called "reverse auctions", in which suppliers would bid for the lowest subsidy amount that the pipeline would have to pay in order for this supplier to take assignment of the supply. The subsidy amount becomes the transition cost.

[6] Utilicorp, as a member of The Marketer Group, generally believes that LDCs, including Boston Gas, must take reasonable and prudent steps to relieve themselves of capacity and supply obligations as they move into an unbundled environment. Utilicorp believes that when such steps are taken, the debate regarding mandatory capacity assignment likely will subside. If LDCs such as Boston Gas have failed to take these reasonable steps, then a mandatory capacity assignment regime should not be available to the LDC as a method to guarantee stranded cost recovery. Moreover, Utilicorp views the specific and unique facts of Boston Gas' proposal, especially the lack of potential stranded capacity cost mitigation and the forced assignment of Canadian supply, as dissolving support for a mandatory capacity assignment regime.

the need for efficient consumer choice, while simultaneously addressing Boston Gas' perceived stranded cost issues.

Under this approach, Boston Gas would make available enough upstream, firm pipeline and storage capacity to meet the Customer's peak demands. Customers and their marketer/aggregators would then have the option to take as much capacity as they need to meet their requirements — the full *pro rata* release, a lesser portion, or nothing, again, depending on the Customer's needs. If Customers choose to take less than their peak requirements, an auction process for the under-utilized capacity similar to that proposed by the Division of Energy Resources would be warranted. *See* Exh. DOER-71, at 15-21. The key elements of this voluntary release/biding proposal are:

- **First Capacity Offering**: Optional election of capacity at maximum tariffed rates by converting firm sales customers or the marketers up to the customer's peak needs.
- **Second Capacity Offering**: Under-utilized capacity, if any, is then offered to all sales customers (firm and interruptible) and all transportation customers at maximum tariffed rates at negotiated volumes.
- **Third Capacity Offering to Open Market**: Under-utilized capacity remaining after the First and Second Capacity Offering, if any, would be bid out to any customer or marketer. Boston Gas would control the timing of this offering, in order to maximize capacity value.

See Exh. DOER-71, at 14-16; Exh. TMG-45.

Such an optional capacity release and auction approach as described above and by DOER represents a fair and equitable method to allocate capacity based on Customer's needs, while mitigating, if not eliminating altogether, Boston Gas' cost exposure that may result from under-utilized capacity. Notably, allowing presently-interruptible customers to bid for firm capacity brings new demand for that capacity to the table, demand that should help mitigate any potential for stranded costs while enhancing such customers' services.

- **BOSTON GAS' PROPOSED "RETENTION-THEN-LEASING AT MARKET RATES" APPROACH FOR ITS DOWNSTREAM ASSETS DEFEATS CUSTOMER CHOICE, FAILING TO ACKNOWLEDGE THAT CONVERTING**

CUSTOMERS PAID FOR THOSE ASSETS AND ARE ENTITLED TO THE OPTIONAL USE OF THOSE ASSETS AT COST-BASED RATES.

As proposed, in order to provide balancing services and to maintain its sales service as it leaves the merchant function, Boston Gas will not release its ownership or access to on-system propane or LNG storage facilities, including related ancillary services. Boston Gas proposes that any "excess" or downstream capacity made available through customer conversions may be leased or out-sourced at market prices. Exh. BGC-1, at 9-16; Exh. TMG-30.

From a simple accounting perspective, simply to allow Boston Gas to take these assets private — which is the impact of the proposal — would be to allow Boston Gas a windfall at its customers' expense. These customers have paid for these assets in their rates over the years and deserve nothing less than "first shot" at using them at cost-based rates. *Id.* at 9-10.

Operationally, this proposal is also deficient. Although Boston Gas does provide for a self-balancing option as part of its Optional Transportation Service and should be complimented for doing so, it fails to provide access to its on-system assets necessary for the Customer to secure its own peaking and balancing services. Again, such a proposal further limits the Customer's ability to choose its level of service and supplier of that service. In fact, true self-balancing may become no option at all without access to the necessary assets to perform that function. Rather, customers may be pushed to pursue Distrigas — a possible "only-game-in-town" situation — for "self" balancing service. Again, this is not supportive of a truly competitive market.

As with its upstream capacity allocation, Boston Gas must be required to provide these assets to converting Customers, at the Customer's option to take them, and at a cost-based price. If on-system asset capacity remains after it is offered to converting sales Customers, then Boston Gas may lease it to the market at negotiated rates. *See also* Exhs. DOER-1, DOER-38, and DOER-71.

- **To Further Customer Choice Concerning On-System Assets, Boston Gas Should Provide A Self-Balancing Option For General Transportation Service Customers And Allow Those Customers To Trade Imbalances On A Daily Basis.**

Boston Gas proposes that only Optional Service Customers may self-balance, provided that they have telemetry installed to facilitate that service. However, this proposal is not in keeping with the provision of fully-unbundled services and the creation of a competitive marketplace for those services. Boston Gas should be required to allow General Transportation Customers to secure balancing services from third parties as well as allow such self-balancing without the need for the installation of telemeters. Of course, as described immediately above, this requires that customers and their marketers have access to various off- and on-system storage and peaking assets necessary to provide self-balancing.

Such a third-party balancing service would not require the use of telemeters. *See*, Exh. BGC-66, at 5. Most customers' usage is sufficiently predictable so that Boston Gas could simply require the Customer's supplier to bring the predicted load to the citygate; "real-time" metering of a small number of supplier deliveries at the citygate is much more efficient and effective than metering thousands of burnertips for balancing purposes. Moreover, while concerns about system integrity may justify the use of telemetering for the very largest customers,[7] telemetering cannot be justified for small commercial users.[8] Finally, system integrity can be assured through failure-to-deliver penalties, scheduling and imbalance penalties, as well as adequate notice provisions (allowing for nomination changes on the upstream pipelines, *e.g.*, 12 hours) to change ATVs during peak periods.

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[7] For these customers, there should be offsetting benefits. If Boston Gas can tell instantly whether and how much gas is being burned by a customer, and appropriate financial penalties are in place for failure to match burns and deliveries into Boston Gas' system, then Boston Gas need not hold any reserve capacity or supply for these customers. Accordingly, the costs of the meter should be offset by lower costs of the services needed by these customers. Moreover, G-45 and G-55 Customers (annual use greater than 250,000 therms), if required to have telemeters (estimated by Boston gas to be approximately $3,000 per meter), should have the option to buy their own, system-compatible meters. Exh. TMG-38.

[8] For example, a small franchise restaurant may use only 3 to 6 dth of gas per day. If all similar restaurants use 6 rather than 5 on a peak day, it would take **20,000** such customers to achieve the same impact as a 20,000 MMBtu-per-day power plant running unexpectedly.

Moreover, telemetering can present both startup and ongoing barriers to Customers' access to unbundled service opportunities. From a startup perspective, the cost of electronic meters can be significant, especially for smaller customers. Additionally, dedicated phone lines, as proposed, represent an on-going maintenance costs as well as an additional ongoing expense. Instead of no self-balancing options or self-balancing with telemetering at the burnertip, Boston Gas should allow GTS Customers to self-balance, utilizing the efficiencies of aggregation and monitoring supplies at the citygate. Moreover, to further enhance such a self-balancing option for GTS, Boston Gas should offer to allow GTS Customers to trade imbalances on a daily basis, as it has proposed for its Optional service.

- **BOSTON GAS SHOULD MODIFY ITS CAPACITY FORFEITURE PROVISIONS TO PROVIDE CERTAINTY.**

As proposed in Mr. Yardley's supplemental testimony (*See* Exhs. BGC-72, 73, and 74, § 11.3), Boston Gas proposes that, until it exits the merchant function "completely", if the Supplier fails or ceases to be a Supplier, the Supplier forfeits its right to assigned capacity. *Id.*

First, Boston Gas should be required to set a date for its complete withdrawal from the merchant function, for example, November 31, 2000. Exh. TMG-3. This will provide additional certainty and stability in terms of the nature and value of the released capacity. Second, for the same reasons, Boston Gas must lay out more specific objective criteria describing the types of circumstances resulting in recall (we do not anticipate that Boston Gas will enumerate all circumstances, but, rather, will be more specific and inclusive). Moreover, Boston Gas should indicate that it will exercise "reasonable discretion" in the application of the capacity forfeiture provisions and that it will not act in a discriminatory manner. These modifications should be spelled-out in Boston Gas' compliance tariffs.

- **BOSTON GAS SHOULD BE REQUIRED TO MODIFY ITS UNBUNDLING PROPOSAL TO ELIMINATE CERTAIN START-UP PROBLEMS AND BARRIERS TO ENTRY.**

- **Boston Gas Should Modify Its Existing Standards of Conduct, M.D.P.U. 943, As Part Of This Proceeding To Ensure A Level Playing Field As Boston Gas Opens Its System To Competition For This Heating Season.**

As the providers of competitive services, marketers must be afforded the opportunity to compete on a level playing field with Boston Gas and its marketing affiliate in providing natural gas products and services to consumers and businesses in the state. Since Boston Gas is a monopoly, it is anti-competitive to allow it to "compete", either through remaining sales services or its merchant affiliate, using its monopoly assets without substantive and procedural safeguards. *It is crucial to recognize that discrimination against non-affiliated marketers translates into discrimination against consumers.* We recommend that fair and thorough standards of conduct, record-keeping and reporting requirements be implemented for Boston Gas[9] to ensure arm's-length transactions, thus affording an equal and level playing field for all parties.[10]

The Marketer Group commends Boston Gas for voluntarily implementing its own standards of conduct governing the relationship with its merchant affiliate, as contained in M.D.P.U. 943. Exh. BGC-1, at 9. Boston Gas is unlike many LDCs that have had to be "pushed" into such protective standards for consumers. Although Boston Gas has moved significantly along the road to fair and workable standards, it has left out a few important and fundamental principles, including:

- **"Transportation Service" Definition**: A complete definition of "Transportation Service" to include all unbundled burnertip services components such as delivery, storage and balancing, and billing and related services. This is key to insure that affiliates are not given preference in terms of services that are presently left out of Boston Gas' concept of transportation service.

[9] The Marketer Group is not seeking to have the Department regulate marketing affiliates. To the contrary, we recommend that the Department treat Boston Gas' marketing affiliate(s) like any other marketer. Our recommendations do address the special relationship between Boston Gas as a *regulated* public service company and its gas marketing affiliate.

[10] Utilicorp, as a participant in The Marketer Group, generally supports standards of conduct. However, Utilicorp notes that *full* separation of *all* employees, whether operational or administrative, may not be necessary, given adequate cost accounting provisions, customer education regarding unbundling, and monitoring of the program, including a "blind" (*i.e.*, no names) delineation of the market shares of *all* other marketers, including the affiliate, doing business behind Boston Gas' citygate.

- **"Employee" Definition**: Boston gas cannot share employees with its marketing affiliate, regardless of a specific employee's function.

- **"Affiliate" Definition**: Although Boston Gas has only one merchant affiliate, AllEnergy, and has no citygate sales or competitive internal merchant function at this time, this could change at any time. The definition of "affiliate" must be broad enough to capture these possible circumstances.

- **Posting**: Contemporaneous Electronic Bulletin Board (EBB) postings (or by other means pending the implementation of Boston Gas' EBB system), must be provided so that no seller has a leg up on another solely by virtue of access to information from Boston Gas. This is especially important in terms of Boston Gas' provision of customer information or affiliate "discounts."[11]

- **Joint Sales Calls**: Joint sale calls between Boston Gas and an affiliated merchant must be prohibited. Allowing Boston Gas and its affiliate to conduct joint sales calls with Customers or circulate joint promotional material sends a clear and anti-competitive signal that benefits accrue from doing business with the affiliate.[12]

- **Complete Separation — No Exceptions**: Boston Gas must provide for complete physical, administrative, financial, and operational separation of Boston Gas employees and the employees of its affiliates, regardless of function. Boston Gas cannot reserve the right to separate employees "to the maximum extent practicable" or fail to define employees to include *all* employees, regardless of function. To do so invites gamesmanship, information passing, accounting difficulties, and ultimately negates the affiliate rules.

- **Record-Keeping and Reporting Requirements**: Boston Gas must have record-keeping and reporting requirements to ensure that a level playing field is maintained, especially during the first years of competition; and

- **Non-Preference Circumstances**: Boston Gas must be required to include a full delineation and prohibition of circumstances creating the possibility of discrimination between affiliates and non-affiliates. Such circumstances include showing preference to its affiliate concerning capacity rights and releases, selling bundled capacity and supply, scheduling, allocation, and nomination of capacity or volumes, system curtailments, or any other services provided by Boston Gas to its affiliate. Some potential problems are:

    - Boston Gas' giving its affiliate preferential "silent" access to excess interstate pipeline capacity — where Boston Gas sells excess interstate capacity (possibly at below-market rates) and gas on a bundled basis to its affiliate, thereby circumventing the posting and bidding procedures required be FERC's rules governing capacity release transactions.

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[11] The Marketer Group acknowledges that Boston Gas is now in the process of developing an EBB-type system for communicating with marketers and customers. The Marketer Group intends to work with Boston Gas in the development of this system. However, such "posting" requirements as we suggest here must be established now as a precursor to the implementation of Boston Gas' EBB system.

[12] The purpose of a joint sales call is not to lower costs or burdens for the Customer; rather, joint sales calls are to solicit business for the affiliate, nothing more and nothing less. Joint sales call create a perception with Customers that the affiliate has a preferred status, and constitutes both a perceived and real competitive advantage for the affiliate that no other unaffiliated marketer can match.

- Boston Gas' implementing service transactions for its affiliate more quickly and with fewer administrative hurdles, thereby disadvantaging non-affiliated competitors and their customers.

As described above and set out fully in Attachment A and Exhibit TMG-45, to alleviate the insider-information problem inherent in a commingled structure, the Department must completely prohibit any sharing of offices, and more particularly, *employees*, between Boston Gas and its marketing affiliate, and also require Boston Gas to make *all* transportation service related information available to all market participants at the same time. As noted, such full separation reduces the potential for problems and eliminates the need for cost allocations to be maintained between the two entities. With these modifications, the potential of discriminatory practices will be greatly reduced. Exh. TMG-22.

Although the Department has implemented an important and forward-thinking rulemaking in *Standards of Conduct Rulemaking*, D.P.U. 96-50, in order to achieve an even playing field in the interim while those rules are finalized and as marketers, including Boston Gas' affiliate, begin marketing campaigns to serve customers for this heating season, The Marketer Group recommends certain changes to M.D.P.U. 943 be made at this time. Exh. TMG-2. For ease of reference, we have included with our initial brief as Attachment A a comparison between The Marketer Group's recommended standards (as contained in the attachment to Exh. TMG-45) and M.D.P.U. 943.[13] We refer the Department to Attachment A and that exhibit for our precise language modifications to Boston Gas' standards of conduct.[14]

- **Boston Gas Should Modify Its Creditworthiness/Financial Information Requirements.**

To be included in Boston Gas' "Qualified Suppliers" list, Boston Gas proposes that Suppliers provide 3 years of financial material for Boston Gas' credit review and approval, and

[13] This attachment should not be construed in any way as a "late-filed exhibit" — it is included in this initial brief to simplify the transmission of our recommendation to the Department concerning Boston Gas' standards and is merely a "redlined" comparison of TMG Exh. 45 and M.D.P.U. 943, each admitted into the record of this case.

[14] We note that many of our recommendation closely track those proposed by the Department in D.P.U. 96-44.

requires additional financial security in the form of a security deposit and/or letter of credit (*e.g.*, at least maximum daily delivery responsibility times $150) if the information is deemed unsatisfactory. Moreover, Boston Gas indicates that it will "review Supplier's financial position periodically." Boston Gas also proposes that a $100 filing fee must accompany all applications. Exhs. BGC-66, at 15; BGC-68, §§ 2.2, 2.3, 2.4.

- ***Boston Gas Should Modify Its Creditworthiness/Financial Information Requirements To Eliminate Undue Discretion And, To Reflect The Requirements Of The Serving Upstream Pipelines.***

The Marketer Group does not oppose reasonable creditworthiness reviews. To the contrary, adequate creditworthiness standards help maintain the perceived and actual integrity of the gas marketer industry and the transportation programs themselves. Reputable marketers, just like the Department and other agencies in the Commonwealth, are interested in reliability. We agree with Boston Gas in one respect — marketers should be required to pass a reasonable credit test.

However, Boston Gas' proposed credit-worthiness test is not reasonable in a number of important areas. Foremost, Boston Gas reserve unilateral and ultimate discretion to reject a marketer's financial application outright and/or require substantial financial security. Boston Gas has not incorporated in its tariff adequate objective criteria rationally tied to the requirement of providing supply service. Such broad, subjective discretion creates the potential for discrimination by Boston Gas and general anti-competitive mischief.

A better, more objective test rationally tied to the provision of service is that *Boston Gas accept Suppliers that have satisfied the creditworthiness criteria imposed by the delivering upstream pipelines as established in their tariffs*. If they have passed the delivering pipeline creditworthiness test, they should not also be required to provide security deposits or letters of credit to Boston Gas. If, conversely, a marketer fails this reasonable and objective creditworthiness test, that marketer should be required to provide a reasonable assurance of payment, *e.g.*, a deposit, letter of credit, or corporate guarantee.

Such a procedure must be spelled out in Boston Gas' terms and conditions and other corresponding tariffs with the explicit statement that Boston Gas will apply this new provision in a reasonable and non-discriminatory manner. In this way, marketers will be required to pass (if they have not passed the test already) a reasonable and objective credit test, set out in the delivering pipeline's tariffs, without being subjected to the risk of completely discretionary (and possibly arbitrary) judgement of credit applications. The Department should note that security deposits and letters of credit come at significant cost, costs likely passed on to the transportation customer, so such security burdens should not be arbitrarily or unnecessarily imposed.

- ***Boston Gas Should Modify Its Creditworthiness Process To Provide For A Prompt and Objective Review***

Boston Gas' credit test is also unreasonable because it fails to specify both a reasonable time period in which Boston Gas will process a marketer's application and some form of dispute resolution if credit standing is denied — this again provides room for discriminatory practices. Because the commencement of open-access service is the most critical period for gaining a competitive foothold in the marketplace and because failure to get a timely determination with respect to creditworthiness can doom a supplier's entry into the market, these seemingly mundane matters are of utmost competitive importance.

Boston Gas should adopt a reasonable processing period, *e.g.*, 5 business days. Again, these changes should be explicitly stated in Boston Gas' compliance tariffs, as should a means for settling disputes over creditworthiness determinations.

- **Boston Gas' Proposed Sign-up Process is Unworkable, Heaping Costs and Undue Burdens on the Customer.**

Boston Gas proposes that to commence transportation service the Customer must submit for approval: (1) a signed Request for Transportation Service; (2) a signed contract with its Supplier; and (3) a security deposit. Boston Gas proposes that upon request of the Customer it will supply directly to the Customer a transportation information package, including load information (*e.g.*, including monthly DCQs and designated receipt point), the Qualified Supplier list, and the transportation agreement. The Customer must execute and submit a Request for Transportation Service to Boston Gas and, if the application is deemed incomplete, the Customer has ten days to provided requested material, or else the request is void. If the Request is accepted, Boston Gas requires that it and the Customer execute the appropriate Service Agreement prior to the 10th day of the month for service commencing in that month. Exhs. BGC-66, at 1-6, BGC-67, §§ 2, 3; Exhs. TMG-10, 11, 12, and 45.

Boston Gas' proposal forces the Customers, rather than the marketer, to jump through nearly every imaginable hoop to secure service — the Customer must submit a signed request form and a signed contract with its supplier, must obtain and transmit its load information to its marketer for potential savings and service analysis, and must then execute, sign, and deliver a Service Agreement with Boston Gas. Such a drawn-out process, requiring multiple contacts between the Customer and its marketer and the Customer and Boston Gas, can only act as a significant barrier to customer conversions to transportation service (especially for smaller customers), heaping costs and a significant "hassle factor" on the Customer. Because of this, the unbundling program likely is unworkable in the first instance, thus denying Boston Gas' customers the benefits of competition and unbundled services.

Boston Gas' "sign-up" proposal has several fundamental infirmities: (1) the proposal creates a likely unworkable morass of complicated, burdensome, and costly administrative steps that the Customer must undertake in order to secure desired transportation service; (2) the proposal fails to utilize efficiently one of the primary benefits of the unbundled marketplace — marketers and their ability to aggregate, market, and eliminate many administrative burdens for customers seeking to secure transportation service; (3) it fails to acknowledge that Boston Gas will benefit from the efficient use of a few marketer/aggregators as agents, rather than forcing multiple administrative "sign-up" transactions with thousands of customers; and (4) the proposal fails to recognize a customers' legal right to designate a marketer to act as its agent for all purposes in securing transportation service, *e.g.*, to request and receive the transportation information package (including load information) and execute the transportation agreement on behalf of the Customer.

In order to further facilitate Customer choice of suppliers, services and subsequent conversion to transportation service, Customers must be allowed to designate marketers as their agents for any and all purposes the Customer chooses, including securing load information as well as securing and executing transportation agreements. In the present U.S. marketplace consumers have a legal right to designate agents to secure a variety of services in a variety of manners; this should include designating agents to sign up for and to commence transportation services. Clearly, comparable access demands no less: to the extent that Boston Gas sale customers can obtain sales service over the phone, there is no reason to treat transportation customers any differently.

- ***Boston Gas Must Substantially Streamline Its Customer "Sign-up" Process and Acknowledge The Customer's Legal Right to Appoint An Agent To Secure Transportation Services.***

The Federal Communications Commission (FCC) has instituted criteria for establishing an agency relationship. In *Re Policies and Rules Concerning Changing Long Distance Carriers*, 7 F.C.C.R. 1038 (1992) (FCC Order), the FCC adopted several alternatives for use in establishing and verifying authorizations to change service. Options available to the Customer under the FCC Order essentially include:

- **Written Authorization**: Signed letter of agency between the Customer and its marketer; or

- **Telephone Authorization**: Binding verbal designation of agency between the Customer and marketer, verified by:

- By agent or third-party tape-recorded voice verification; or
- By a verification package sent to the customer, including a return stamped postcard clearly indicating that if the postcard is not returned within 14 days, service will be changed (*i.e.*, a "negative check-off" postcard).

Each method creates a legally binding and enforceable agency relationship between the Customer and its marketer.

The Department should require Boston Gas to acknowledged marketer agency and provide its Customers with the option to designate agent either by written or verbal authorization (verified as described above). For years, telephone customers have been allowed to change long-distance carriers over the phone, with the long-distance carrier making the arrangements with the permission of the customer. There is no reason a similar model could not be applied to local gas service.[15]

Participants in The Marketer Group has been told in response to this recommendation concerning verbal authorization of telephone-related issues of "slamming" (*i.e.*, switching the customer's long distance service without permission) and other telemarketing abuses in the telephone industry. However, unlike the phone industry, a marketer would not have access to a gas customer's billing number. Thus, only if the customer gave the marketer its customer number willingly would the marketer have authorization to obtain the customer's load information or change the customer's gas supplier.[16]

Also, in the telephone arena, the Federal Communications Commission (FCC) has put in place many protections for consumers to prevent any abuses by telemarketers of long distance service, including substantial fines for abuses. *See Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 911 (1985), *recon. denied*, 102 FCC 2d 503 (1985); *Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 935 (1985). Moreover,

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[15] We note that in the Commonwealth, Bay State Gas, as part of its residential pilot program, acknowledges agency designation as described herein.

[16] Customer release of its "gas number" over the phone in order to designate a marketer as its agent would also be supported by a taped "voice verification"; this arrangement is legally binding for both parties. The marketer would maintain the taped records for inspection if needed. Such voice verification is an accepted practice in other industries for agency designation and has been condoned by NARUC for telecommunications.

the FCC, as promoted by the National Association of Regulatory Utility Commissions (NARUC), has adopted non-written agent confirmation procedures for the telephone industry, including oral agent designation with recorded verification. *See Policies and Rules Concerning Changing Long Distance Carriers*, FCC Docket No. 91-64, Report and Order, 7 FCC 2d 1038 (1992); *recon. denied*, 8 FCC 2d 3215 (1993).[17] Given these protections as models for what could be instituted in the Boston Gas service area, there is no reason to prohibit the exercise of customer choice via telephone, and, given that unbundling is at its very root an exercise in choice, every reason to allow verbal exercise of that choice.

Given that Customers have a legal right to designate marketers as their agent either in writing or verbally, Boston Gas must, if a customer desires, acknowledge that the marketer can act on behalf of the Customers for any and all purposes the Customer chooses, *i.e.*, to secure the Customer's transportation packet and load information directly from Boston Gas,[18] and to secure directly from Boston Gas and execute the Customer's transportation service agreement on the Customer's behalf. Given that service history information is the Customer's, and the capability to extract that information has been paid for through rates, Boston Gas should provide this information to the Customer's agent free-of-charge or, at the very least, at a nominal, cost-based charge (*e.g.*, for postage).

Such agency arrangements will facilitate innovative and efficient marketing techniques necessary to save customers money and will allow the customer to shift from the customer to the marketer (as agent) any actual or perceived "hassle" related to securing transportation service. This is of particular importance as the numbers of commercial and industrial converting customers seeking unbundled services, individually and in aggregated groups, increases. Moreover, such an oral "checkoff" for agents will help Boston Gas facilitate load

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[17] Customer's designating agents in this manner are provided protections under contract and state and federal regulations. *See*, *e.g.*, *Truth in Advertising Regulations*, 940 C.M.R. 3.000, *et seq.*; *Federal Trade Commission Telemarketing Sales Rules*, 16 C.F.R. Part 310; *Federal Trade Commission Act*, 15 U.S.C. 45(a)(1). Moreover, adequate Customer information should be available from Boston Gas, the Department, and marketers concerning the rights and obligations of customers utilizing competitive unbundled services.

[18] Securing the Customer's transportation packet (including available receipt points) and load information is often a crucial part of the deal -- without it, marketers can have difficulty demonstrating the savings to be offered to the Customer or other operational aspects of service.

aggregation by streamlining its service-request process. Thus, rather than having to deal with requests for service individually from thousands of customers who are inexperienced with the process, Boston Gas would deal with a handful of experienced aggregators. Adequate customer information and existing consumer protection laws will prevent any perceived potential for abuses of agency designations. Without such streamlining, Boston Gas is merely creating its own administrative burdens. Moreover, allowing Boston Gas to gain experience with such alternative methods of agency designation will likely prove invaluable when unbundled service are offered to the residential sector.

- ***An Outline: How It Will Work***

The following is an outline of how a streamlined sign-up procedure would work, with Boston Gas utilizing marketers as agents for the Customer. The Department should note that this procedure is an *option* for the Customer; the Customer may choose not to use a marketer as an agent for any purpose, for limited purposes, or may require a different arrangement altogether with its marketer:

- Boston Gas will accept a marketer's request (via phone or other methods) for the transportation packet, load information and the transportation contract on behalf of the Customer, based on the marketer's representation that it acts as the Customer's agent (backed up by the Customer's gas account number)
    - Agency is verified by written or verbal authorization (tape-recorded or third-party voice verification), *at the Customer's option*, maintained by the marketer and available to Boston Gas within 7 business days of a request;
    - The Agency verification method chosen by the Customer is controlling if there is a dispute;
- Boston Gas will accept customer lists from the marketer indicating that the marketer acts as agent for the Customer(s) and the Customer(s) agrees to the transportation contract (backed up by the customer's gas account number, verified as above). At this point, marketer gas will flow to the Customer(s).
    - The marketer will maintain a Transportation Service Agreement, signed by the marketer on behalf of the Customer, available to Boston Gas within 48 hours. Of course, the Customer may choose to sign its Transportation Agreement and forward it to the marketer or Boston Gas.

Given this, Boston Gas must be required to submit compliance tariffs implementing alternative, written and non-written forms-of-agent designation as a tariff addition to its transportation service *Terms and Conditions* for review and approval by the Department.

- **In Order To Eliminate Unnecessary Cost and Burden For Converting Customers, Boston Gas Should Provide Marketers With The Option to Bill the Customer Directly For Supply Service Or Both Transportation and Supply Service.**

Boston Gas proposes that Customers receive a bill from Boston Gas for transportation services and a separate bill from marketers for supply service. Exh. BGC-66. In Bay State Gas Company's residential pilot program, Bay State offers an innovative option for the customer to receive one bill from the marketer for supply and transportation services, at the marketer's election. This option provides an opportunity for the marketer to reduce costs for its customers as well as to prevent customer confusion and "hassle" arising from the receipt of multiple bills. Boston Gas should be required to adopt a "single billing" option similar to that offered by Bay State, whereby the marketer is provided a single bill and pays Boston Gas directly for transportation services. Moreover, this method would simplify Boston Gas' receivables. We note that Boston Gas would retain its relationship with its transportation customers through bill inserts and direct mailing regarding transportation service.

In terms of billing, it is simply a waste of Boston Gas' administrative resources (paper, postage, and personnel), to bill each individual customer in an aggregation group. Boston Gas must recognize that sending a single bill to the aggregator for services rendered by Boston Gas to the group (whereby the aggregator then rebills the customers for the Boston Gas' charges as well as commodity-related costs) could significantly reduce, if not eliminate, many of Boston Gas' costs to bill transportation customers individually. Moreover, in addition to the cost savings for Boston Gas and the customers, transportation customers are then rendered a single bill for gas services, greatly simplifying the billing process for the customer. Given this, the Department should require Boston Gas to provide for a single billing option.

- **Boston Gas' "Change of Suppliers" Administrative Fee is Not Cost-Justified, And Merely Represents A barrier to Entry.**

Boston Gas proposes a $50 administrative fee payable by the Customer if it chooses to change suppliers, after its first election. Exh. BGC-67, § 3.3. Apparently Boston Gas seeks to justify this administrative fee as necessary to recover alleged incremental costs associated with switching a Customer's supplier. At first blush, this justification may appear to make some sense. On closer examination, however, it is illusory.

In the first place, this charge is estimated, and has not been adequately justified as an incremental cost of providing transportation service. Exh. TMG-13. Thus, it is highly likely that the estimated $50 cost is not incremental at all but, rather, is already being collected in the existing rates. More critically, such a switching fee discourages conversions in the first instance because the customer sees an unanticipated "risk" — with a $50 price tag — associated with entering the market and then changing suppliers. This quashes a Customer's right to choose and act in a competitive marketplace and, moreover, disrupts the competitive functioning of the marketplace itself. If a Customer is unhappy with service from one supplier, it should have the fluid right to change suppliers without the threat of fees when exercising that right. Boston Gas should eliminate this fee as not cost-based and an impediment to customer choice.

- **Boston Gas' Proposed Interim Sales Service — 1.5 Times The Daily Index Rate — Is An Unjustified Penalty And A Barrier to Entry And, Thus, Must Be Eliminated.**

Boston Gas proposes under its GTS that should a Supplier become ineligible to deliver (*e.g.*, is no longer creditworthy) or deliver less than five times the ATV, then the Supplier is not allowed to nominate and the Customer must, for the rest of the month or until it selects a new Supplier, take Interim Sales Service, *at a rate of 1.5 times the Daily Index or Boston Gas' Gas Adjustment Factor (GAF), whichever is higher.* Exhs. BGC-66, at 7-10; BGC-67, at 4-6.

Boston Gas' 1.5 Index rate merely penalizes the Customer should its marketer fail. If the marketer fails, it is subject to balancing and contractual penalties, as well as threats to creditworthiness and qualified supplier status. Given the existence of a marketer penalty structure, there is no need to then punish the Customer by forcing it to take Interim Sales Service at the higher (not lower) of 1.5 times a market fluctuating index or the GAF. Moreover, Boston Gas has not justified its 1.5 multiple as related to any identifiable incremental costs necessary to take customers back to interim sales, bolstering the argument that the rate is not cost-based and acts merely to penalize the Customer rather than recover legitimate costs.

Because of its penal nature, this 1.5 times Index rate in turn acts as a barrier to entry, putting the Customer at risk if the Supplier fails or is no longer creditworthy. If capacity and supply are available (and they should be during the unbundling transition phase), Boston Gas should be required to take a customer back on Interim Sales Service at Boston Gas' GAF or its Daily Index, whichever is *lower*. In this way, Boston Gas will recover its costs and the Customer will not be induced to avoid transportation service. The Department should require Boston Gas to make the corresponding changes to its tariffs.

- **Boston Gas Has Capacity For Existing Sales Customers — It Should Be Required To Delete The Provision That Allows It**

To Deny A Transportation Request If It Impairs Its Firm Service Obligations.

Boston Gas states that no request for transportation service will be granted if it impairs its ability to meet its firm service obligations. Exh. BGC-67, §§ 3.4, 3.5. This statement is somewhat illogical — if Boston Gas can serve a customer as a sales customer (whether existing or incremental), it should be able to serve a customer as a transportation customer without "impairing its obligations." Such a provision leaves Boston Gas with undue discretion it does not need and presents the opportunity for discriminatory treatment. Accordingly, this provision should be deleted as unjustified, potentially discriminatory, and presenting a barrier to customer conversions on its face. At the very least, Boston Gas should provide objective criteria in the tariff for refusal to grant a transportation service request for incremental customers.

- **Boston Gas' Reservation To Establish Standards For Suppliers Fails To Acknowledge That Marketers Are Not Regulated Entities And The Standards Are Undefined And Thus The Provision Should Be Eliminated.**

In *Requirements of Service — Supplier Standards (GTRS, § 2.1)*, Boston Gas reserves the right to establish "reasonable and non-discriminatory standards for Suppliers", although it has not provided any standards for review. Exh. BGC-68, § 2.1; Exh. TMG-17. The lack of any standards to comment on makes this provision unfair on its face — allowing Boston Gas such a wide-opened provision presents the opportunity for mischief. Moreover, this much must be said: marketers are not regulated entities, and Boston Gas' proposed blank-check "Supplier Standards" could be viewed as an attempt to decoy the Department into supporting back-door regulation of marketers.

It is critical for Boston Gas and the Department to realize that independent gas marketers do not come under the Department's regulatory authority, and tariffed "Supplier Standards" (defined or undefined) represent an inappropriate attempt to lure the Department into a form of "back-door" regulation. Marketers cannot be legally construed as "public utilities" subject to Department jurisdiction, given that marketers do not have monopoly characteristics of regulated public utilities and do not invoke any of the traditional public utility rights or obligations. Furthermore, the Massachusetts legislature did not intend that marketers be subject to Department regulation in the first instance.

Moreover, if the Department lets such a vague and inappropriate provision stand, the attempted assertion of back-door jurisdiction the provision presents will do nothing more than skew a competitive market and force marketers to provide service elsewhere because of the threat of "regulation" — to the ultimate detriment of the Commonwealth's consumers.

If the inclusion of a "Supplier Standards" provision is intended to serve the laudable goal of consumer protection, then we suggest that Boston Gas, the Department, and marketers focus on customer information and education as an effective method to ensure consumer protection. This is an area where the Department (and Boston Gas) can rightfully and effectively exercise authority. We also note that existing laws and rules provide a broad range of consumer protections: marketers must satisfy reasonable creditworthiness requirements, and are subject to balancing and failure to deliver penalties as well as existing corporations law registration requirements for business entities seeking to do business in the Commonwealth, while customers have additional and substantial recourse to general civil and consumer protections laws and penalties. Finally, it should go without saying that a competitive market is truly the best form of consumer protection:- consumers can quickly find another source of supply if they are not satisfied with a marketer's service (assuming that no supplier-switching fee or other barriers are in place).

For all these reasons, Boston Gas should delete this provision in its entirety; it provides no standards and attempts back-door regulation of marketers that could impact all the Commonwealth's public utilities.

- **Boston Gas' Unaccounted For Gas Factor of 2.5% Is Unjustified And Contradicted By Its Own Reports.**

Boston Gas proposes an Unaccounted For Gas Factor of 2.5%. Exh. BGC-68, § 5.2. However, in response to RR-TEC-3, Boston Gas updated that factor to 1.25% (excluding gas used by Boston Gas). The Department should require Boston Gas to lower its retention factor to this revised level.

- **Boston Gas' "Nomination Content" Requirements Must Explicitly State That Boston Gas Cannot Request Proprietary Information.**

Boston Gas proposes that nominations set forth among other things volumes to be received, shippers and "any other information reasonably required by the Company to identify such deliveries." Exh. BGC-68, § 4.2. Because we operate in a competitive environment, marketers are highly sensitive to revealing confidential or proprietary contract terms, such as price or supply source. Given that this provision is vague on its face and could be read to include the requirement that marketers turn over confidential material to Boston Gas, Boston Gas should eliminate the phrase beginning "any other information", as well as indicate that it will not request confidential or proprietary information.

- **Boston Gas Should Be Required To Modify Its Receipt Point Assignment Proposal To Allow For Customer Flexibility.**

Under its proposed tariff, Boston Gas has the right to assign unilaterally primary receipt point rights to its new transportation customers. Exhs. BGC-66, at 5-6; BGC-67 (definitions). The Marketer Group has two significant concerns regarding this right of assignment. First, Boston Gas should not be permitted arbitrarily to allocate and then assign primary receipt point capacity to its transportation customers. Rather, Boston Gas should be required to allocate the primary receipt point capacity associated with the assigned upstream transportation capacity in the same proportion as its own upstream transportation capacity is currently allocated among Boston Gas's individual citygate receipt points. This sort of proportional allocation will ensure that some transportation customers are not unfairly burdened with less favorable receipt point capacity (*i.e.,* primary receipt point rights at specific citygate points that are physically constrained or that are located on portions of Boston Gas's system with inadequate take-away capacity), that would otherwise increase the costs of (or even jeopardize) a customer's efforts to flow gas onto Boston Gas's system.

Second, the Department should clarify that Boston Gas does not have a unilateral right to dictate which citygate points a shipper may use on an alternate basis. Transportation customers who have obtained assigned upstream capacity should have the full rights granted by the upstream pipelines' tariffs to nominate flexibly and flow gas to all of Boston Gas's receipt points, on either a primary or secondary basis. Nothing in Boston Gas's filing or testimony has justified a need to impose upon Boston Gas's transportation customers more restrictive operational requirements than those contained in the tariffs of the upstream interstate pipelines.

- **Boston Gas Should Be Required To Allow Customers To Switch Between General And Optional Services More Frequently Than Once A Year.**

Although offering Optional Service is a good start, The Marketer Group opposes Boston Gas's proposal that a Customer may not change its service election between General Transportation Service and Optional Service more than once a year. Exh. BGC-69, § 3.6. While ***some*** limitation on a Customer's ability to choose between GTS and Optional Service may be reasonable, the one-year minimum term proposed by Boston Gas is excessive and unjustified. By locking Customers in to one kind of service for an entire year, this provision will substantially hamper Customers from tailoring the kind of balancing service they desire to their actual balancing needs, thereby increasing their costs and denying them the full benefits of open-access transportation on Boston Gas's system.

Boston Gas has failed to justify this one-year requirement. For example, Boston Gas has not explained how this limitation tied to identifiable operational parameters (such as storage injection/withdrawal schedules on upstream pipelines) or supply-related constraints.

In the absence of such justification, the Department should not approve Boston Gas's overly-long one-year minimum term for GTS and Optional Service. Customers must be permitted reasonable flexibility to elect the kind of transportation that best matches their changing needs. The Marketer Group suggests that Customers be allowed to switch between GTS and Optional Service at least seasonally.

- **Boston Gas Should Be Required To Modify Its *Force Majeure* Clause In Terms Of Boston Gas' Own Negligence And The Lengthy Time To Cure.**

Boston Gas' *force majeure* clause excuses Boston Gas and Customer liability for such circumstances as: *"breakage or accident to machinery or pipeline,* or declaration of Force Majeure by the upstream transporting pipelines." *See*, *e.g.*, Exh. BGC-67, § 10. If Boston Gas cannot provide firm transportation under a *force majeure* situation, the customer has 30 days to provide written notice of service termination, then Boston Gas has 30 days to restore service, or else the transportation agreement terminates. Exh. TMG-15.

Although a reasonable *force majeure* clause is a necessity, The Marketer Group opposes two aspects of Boston Gas's proposed *force majeure* provision. First, the provision is over-broad; it would inappropriately excuse Boston Gas's performance in circumstances where breakage to Boston Gas' facilities was caused by Boston Gas's own negligence or misconduct. The Department should require Boston Gas to modify its proposed *force majeure* provision to provide that "breakage or accident to machinery or pipeline" will not qualify as a *force majeure* event if they are the result of Boston Gas's negligence or misconduct.

Second, the notice provisions under the *force majeure* clause are somewhat extravagant because they provide Boston Gas with far too much time to correct the *force majeure* outage without any accountability to the Customer whose service has been curtailed. For example, under the notice provisions, Boston Gas could under a *force majeure* event fail to provide service for 59 days, curing the problem on the 60th day, and still maintain the Customer's responsibility for rates and charges under the transportation agreement.

The Department should require Boston Gas to modify the notice provision such that in the event Boston Gas is unable to restore service to a Customer within 30 days, the Customer (i) is immediately relieved of any further demand charge obligation, and (ii) may, at its sole option, elect not to terminate contract by providing Boston Gas with an additional 30 days to correct the service interruption.

- **Boston Gas' Curtailment Provision Provides For Too Much Discretion And Uncertainty.**

The Marketer Group supports reasonable curtailment standards. However, Boston Gas proposes to curtail or interrupt firm service "in its judgement." Exh. BGC-67, § 11. As drafted, this essentially-standardless provision affords Boston Gas a troubling amount of flexibility to interrupt firm transportation service. So that firm shippers are not subjected to unwarranted risk of curtailment, the Department should, at a minimum, require Boston Gas to revise this language to provide some objective standards for when Boston Gas is entitled to curtail firm services, and to state that Boston Gas will curtail services only in a nondiscriminatory manner. In addition, Boston Gas should be required to clarify that firm transportation and firm sales services will have the same priority level for curtailment to the extent each service class has confirmed receipts at Boston Gas's citygate delivery points.

- **Boston Gas Critical Day/OFO Construct Does Not Provide For Reasonable Objective Standards, Adequate Notice, Or Penalty Exemptions For Suppliers That "Help" The System During Critical Periods.**

Boston Gas proposes to declare a critical day at any time in its "reasonable discretion" for circumstance such as: (1) failure of Boston Gas' facilities; (2) near-maximum utilization of those facilities, including supply resources; (3) inability to fulfill firm service obligations or maintain operational integrity; (4) an upstream pipeline Operational Flow Order (OFO); and (5) a Critical Day declaration for the system. Moreover, a Critical Day may be called by Boston Gas on a *Supplier-specific basis* "if warranted by Supplier's conduct in Boston Gas' reasonable judgement." Boston Gas proposes to provide Notice of a Critical Day "as soon as practicable." Exhs. BGC-66, at 14-15; BGC-68 (definitions); Exh. TMG-16.

The Marketer Group supports Boston Gas' ability to declare a Critical Day in order to protect system integrity if based upon reasonable criteria and notice. However, Boston Gas' proposal is deficient, especially in terms of notice to Suppliers of a Critical Day/OFO situation and the failure to waive penalties if Suppliers help Boston Gas' system integrity during a critical period. We suggest that Boston Gas be required to adopt the following enhancements to its Critical Day/OFO provisions:

- In terms of **Supplier-specific Critical Days**, Boston Gas should provide at least 24 hours notice before the nomination deadline in order to give Suppliers a reasonable chance to adjust their nominations on the serving pipelines and thus avoid penalties.

- In terms of **System-wide Critical Day notice**, Boston Gas should:

    - Provide an *Annual Operating Plan* and/or briefing to Suppliers, as they now develop with the serving pipelines, to inform marketers and customers what to expect for the next year in terms of deliverability constraints. This will allow marketers to plan their deliveries more accurately to avoid critical situations in the first instance.

    - Provide on a best efforts basis an *Advisory Action* notice requesting *voluntary* actions on the part of Suppliers to alleviate system problems before calling a mandatory OFO. This again is prudent because it at least creates the opportunity to correct system exigencies before they reach a critical state requiring mandatory action.

    - Provide for *Penalty Exemptions* for Suppliers who "help" the system by erring on the side of caution and being out of tolerance in the "right" direction; such Suppliers should be rewarded, not penalized.

With these enhancements, Boston Gas' Critical Day/OFO mechanism will have a better chance to avoid critical circumstances that may threaten system integrity while providing the chance for Suppliers to help Boston Gas maintain that system integrity.

- **<u>BOSTON GAS SHOULD MODIFY ITS PROPOSAL CONCERNING INTERRUPTIBLE CUSTOMERS REGARDING VALUE-OF-SERVICE PRICING, ELIGIBILITY, CURTAILMENT, AND THE "BUY-OUT."</u>**

  - **Given Its Move To A Competitive Market, Boston Gas Must Be Required To Charge Interruptible Customers Cost-Of-Service Based Rates Enhancing Access To The Competitive Market, Rather Than Value-Of-Service Monopoly Rates.**

For its monopoly distribution and supply services, Boston Gas charges Interruptible Customer with alternative fuel capabilities based on a value-of-service (VOS) mechanism, allowing Boston Gas to track its interruptible transportation (IT) charges based on the value of alternative fuels. Specifically, under the VOS mechanism, Boston Gas can raise its IT charge, without regard to a cost-of-service cap, to the necessary amount to thwart the interruptible customers' economic incentive to exercise its alternative fuel capabilities and remain with Boston Gas. Fundamentally, this is monopoly pricing as it varies to thwart competition and is unrelated to the cost to provide transportation service.

Our complaint here is simple: VOS acts as an impediment to IT customers' entering the competitive natural gas market because of the upward flexibility of the transportation charge, uncapped by the cost to provide transportation service. This is particularly troubling as Boston Gas opens its market to competition: some customers will benefit, while others under the VOS pricing structure are left behind to pay Boston Gas' transportation price, however high. Boston Gas should be required to adopt a cost-of-service based IT rate (*see*, USGC/RC-1, 3-10).

  - **Boston Gas' Proposed "Buy-Out" Of The IT Market For The Benefit Of Shareholders Is An Inappropriate Attempt To Curb Competition And Corner A Market Of Increasing Value.**

Boston Gas proposes to purchase the Interruptble Transportation (IT) market from its core customers, crediting base rates approximately $2 million. This "price" is based on interruptible margins and throughput for 1993-1995. This market has obvious value to Boston

Gas as we move forward into a competitive market. Exh. BGC-6,7. Boston Gas essentially is buying the IT market, with shareholders gaining 100 percent of throughput increases and margins — ratepayers will not see any return. Moreover, under the VOS pricing mechanism, Boston Gas can simply exact monopoly profits from their captive IT market, with IT customers never seeing the competitive "light of day" regarding their choice to buy and use alternative fuels or any other gas supplier.

This is a particularly troubling proposal. As competition for supply and new fuel technology becomes available to interruptible customers,[19] and those customers that may switch to such services, the "value" of Boston Gas' IT market arguably must change: likely throughput will increase, raising the market's value well above the 1993-1995 estimates. Boston Gas cannot be allowed to corner this market by paying an outdated price and, in turn, denying its ratepayers the benefit of the IT margins while charging IT customers VOS prices. The Department should reject Boston Gas' "buy-out" proposal, deferring consideration until a competitive market has truly developed, the value of the IT market may be accurately assessed, and a variety of players may compete to secure that value. Boston Gas could win this market in the end, but they must be forced to play in a competitive arena for that windfall. Exh. DOER-71, at 21-25.

- **Boston Gas' One Year Limitation Before G-45 and G-55 Customers Are Eligible For IT Is Unjustified And Unduly Constrains Customer Choice.**

In its proposed GTS Terms & Conditions, Boston Gas indicates that Rate Schedule G-45 and G-55 Customers are ineligible for IT for one year. Exh. BGC-67. On its face, without a significant operational justification, such a requirement merely acts a barrier to entry serving to severely limit G-45 and G-55 from making their own service decisions and unduly constrains the competitive market. Boston Gas should be required to remove this limitation.

[19] We also note that Interruptible Customers will gain greater access to firm capacity, thereby increasing the opportunities to "play the market" through the proposed voluntary capacity release and bidding allocation method described earlier.

- **Boston Gas Should Be Required To Waive All Penalties Associated With A Curtailed Interruptible Customer If The Customer Actually Delivers The Required Volumes.**

Boston Gas proposes that if an interruptible customer is curtailed, Boston Gas ***may*** waive any daily imbalance penalty. Exh. BGC-71, § 3.2, 3.3. The Marketer Group objects to this provision because it is too broad. Certainly, Boston Gas should be entitled to assess imbalance penalties upon interruptible customers who were interrupted because they failed to deliver adequate volumes to Boston Gas's citygate. Just as certainly, however, Boston Gas should be ***required*** to waive all penalties associated with a curtailed interruptible customer if that customer actually delivered its gas to Boston Gas's citygate. In such a circumstance, the interruptible customer's gas would have been introduced into Boston Gas's system, and any curtailment of those volumes would most likely be the consequence of Boston Gas's decision to divert gas to other customers. As such, not only should Boston Gas be required to waive all penalties associated with the curtailment, it should be required to compensate the interruptible customer for its diverted gas. The Marketer Group respectfully requests that the Department require Boston Gas to modify its tariff accordingly.

- **CERTAIN ENHANCEMENTS SHOULD BE MADE TO BOSTON GAS' PROPOSAL IN TERMS OF GOING FORWARD.**

  - **Boston Gas Should Confirm Its Commercial and Industrial Unbundling Schedule, While Providing Unbundled Services To Its Residential Customers in 1997 Through A Consensual Roundtable Process.**

Boston Gas proposes to open its commercial and industrial markets on December 1, 1996, although some parties have challenged this date as too soon, given the need for consumer education. Boston Gas has also proposed to open its residential market on November 1, 1997, with a proposal by April 1997, yet some parties have criticized this as again too soon. Exh. BGC-66, at 5-6; Exh. TMG-8. Boston Gas' customers have waited too long for access to competitive gas supply and the cost savings and service benefits that accrue from Customer choice. In terms of the C&I market, The Marketer Group's experience has been that transportation conversions *do not happen overnight* — the progression often is slow and steady toward Customers availing themselves of the benefit of the competitive marketplace. Many C&I Customers are well aware of how unbundled services work, others will receive information[20] from the Department, Boston Gas, other LDCs, marketers, and the "word of mouth" from other Customers, while others will wait until next heating season or become passive customers.[21] There is no better way to provide information to the marketplace than by an actual demonstration of how that marketplace works. Obviously, Boston Gas believes December 1, 1996 is a workable start-time for the C&I program, The Marketer Group does as well.

However, there is no need to delay residential choice or the benefits of a competitive market for residential consumers until 1998. There are several residential pilots in existence throughout the Country, including Bay State Gas' pilot program, that will provide valuable insight and actual experience concerning the design of a residential unbundling program. Moreover, Boston Gas' C&I program will have been in-place through a heating season, again providing valuable, actual experience that can be brought to the design of a residential program. The Marketer Group recommends that, at the very least, Boston Gas be allowed to open its residential market on November 1, 1997.

Toward this end, and to help ensure a vibrant and successful residential program, we request that the Department mandate a residential unbundling roundtable — including all stakeholders such as Department staff, the Attorney General, DOER, other consumer advocates, and marketers — similar to that undertaken by Bay State Gas in the design of its program, commencing in the first quarter of 1997. The goal of this roundtable process will be

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[20] Moreover, as we have suggested herein, Boston Gas and other stakeholders should develop a consensual, Department approved, Customer information pamphlet outlining the rights and obligations of the various players (*e.g.*, Boston Gas, marketers, and state agencies) in an unbundled market, available for distribution by all those players. *See* TMG Exh. 45.

[21] Boston Gas should be required to "bid out" rather than assign Passive Customers (those Customers failing to elect a third-party supplier) to marketers through a request-for-proposal-process. This process will facilitate Boston Gas' exit of the merchant function. Exh. TMG-33; Exh. BGC-1, at 17-19.

the submission of consensually-developed residential unbundling tariffs, terms and conditions, and customer information plans, to the Department for approval and implementation in November 1997. In this way, Boston Gas and other participants can benefit from a free exchange of ideas and skills necessary to develop and submit for approval a successful program, while hopefully avoiding strenuous litigation that may unnecessarily delay the provision of choice for residential customers.

- **Boston Gas Should Be Required To Provide Suppliers Adequate Notice Of Rate Or Terms Changes Regarding Its Program.**

Under its proposed tariff, Boston Gas is not required to serve proposed rate and tariff changes upon its transportation customers. The Marketer Group is concerned about this omission. Boston Gas's transportation customers and their suppliers need adequate advance notice of material changes in Boston Gas's rates and tariffs, not merely to exercise their due process rights to comment upon these changes before they are effectuated, but also to make any necessary adjustments to their supply and transportation portfolios or other commercial arrangements in response to such proposed changes. Marketers operate in a commercial world where notice of rule changes is a prudent operating procedure. Such notice will be especially critical once Boston Gas' unbundled tariffs become effective and the number of suppliers on Boston Gas' system multiplies.

Accordingly, the Marketer Group respectfully requests that the Department require Boston Gas to modify its rate forms to clarify that Boston Gas is obligated to inform (with a reasonable notice period) the Customer/Supplier of any rate, or terms and condition changes prior to filing such changes with the Department.

- **The Department Should Monitor Such Things As Market Penetration.**

We generally support the monitoring guidelines proposed by DOER in its prefiled testimony. The Marketer Group emphasizes that the Department should require Boston Gas to submit a monthly or quarterly Report including the public release of information concerning the market penetration (by volumes, and type and numbers of customers) of Boston Gas' affiliate(s) into Boston Gas' service territory, including a "blind" (*i.e.*, no names) delineation of the market shares of all other marketers doing business behind Boston Gas' citygate (similar reports are filed in other states, such as Maryland and New Jersey). With such a report in hand, any speculation or innuendo concerning Boston Gas' affiliate, or any other marketer for that matter, unfairly "cornering the market" can be highlighted and, if appropriate, addressed by the Department.

CONCLUSION

As stated herein, The Marketer Group applauds Boston Gas for a forward-thinking unbundling proposal generally as well as "stepping up to bat" regarding the provision of competitive opportunities for its customers. With the modifications and enhancements described above, Boston Gas' program will have a better chance to live up to its promise of providing to its customers the benefits of a competitive market. With this in mind, we respectfully request that the Department adopt the recommendations made herein.

Respectfully submitted,

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Dated: September 25, 1996
Washington, D.C.

I hereby certify that I have this day served the foregoing document upon all parties of record on the official service list compiled by the Chief Clerk in this proceeding.

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Boston Gas Company, D.P.U. 96-50

Attachment A

[***Revisions Proposed by The Marketer Group to M.D.P.U. 943***]
[Taken From Exh. TMG 45]

STANDARDS OF CONDUCT,
RECORD KEEPING, AND REPORTING REQUIREMENTS

This tariff states the standards of Conduct to which Boston Gas Company ("Company" or "Boston Gas") will adhere with respect to affiliated entities.

Definitions

(a) The term "affiliate" is as defined by G.L.c. 164, § 85. Any Boston Gas internal merchant division providing citygate or other sales service, existing now or in the future, shall be considered synonymous with an marketing affiliate.

(b) "Transportation Service" should be defined as "the receipt of gas at one point on Boston Gas' system and redeliver of an equivalent volume of gas to a retail consumer of gas at another point on Boston Gas' system including, but not limited to, scheduling, balancing, metering, peaking, storage, exchange, standby service, curtailment policy, backhaul and displacement or addressing billing and invoice questions and disputes."

Standards of Conduct

(a) The Company must apply any tariff provision relating to transportation service in the same manner to the same or similarly situated persons if there is discretion in the application of the provision. The Company must apply the terms and conditions of its tariff and other tariff provisions without regard to whether the supplier is an affiliate.

(b) The company will strictly enforce a tariff provision for which there is no discretion in the application of the provision.

© The Company will not, through a tariff provision or otherwise, give their marketing affiliates or customers of affiliates preference over non-affiliated gas suppliers or customers in matter relating to transportation service, including, but not limited to, scheduling, balancing, metering, storage, standby service, ~~or~~ curtailment policy or in addressing billing and invoice questions and disputes.

(d) If the Company offers its affiliate, or a customer of its affiliate, a discount, rebate or fee waiver for transportation delivery services, balancing, meters or meter installation, storage, standby service or any other service offered to shippers ~~will~~ must contemporaneously offer the same discount, rebate or fee waiver to all similarly situated non-affiliated suppliers or customers. The Company will file with the Department procedures that will enable the Department to determine how the Company is complying with this standard. The Company must effectuate such contemporaneous offers by making an appropriate posting on a general alert screen of its electronic bulletin board.

(e) The Company must process all similar requests for transportation for and with respect to service in the same manner and within the same period of time.

(f) The Company will not disclose to its affiliate any ~~information the Company receives from~~ information obtained in connection with providing delivery or related services to: (I) a non-affiliated customer or supplier, (ii) a potential customer or supplier, (iii) any agent of a customer or potential customer, or (iv) a marketer or other entity seeking to supply gas to a customer or potential customer.

(g) The Company will not provide sales leads and other information regarding customers (potential and otherwise) to marketing affiliates, and will refrain from giving any appearance that the Company speaks on behalf of its affiliate. If a customer requests information about ~~marketers~~ securing its own gas supply or about marketers in general, the Company will provide a list of all marketers operating on the system, including its affiliate, but will not promote its affiliate. The Company must not share common phone numbers with a marketing affiliate. The Company may not establish an "agency" or similar sales program, or engage in "joint sales" calls or other activities.

(h) To the extent the Company provides to an affiliate information related to the transportation, sales or marketing of natural gas to customers or potential customers on its system, including but not limited to Company customer lists, customer usage, customer credit history and the Company's projected regulated sales prices, it must make that information available contemporaneously to all suppliers or potential shipper suppliers, affiliated and non-affiliated, on its system. The Company's disclosure of such information must be effectuated by posting the information on a general alert screen of its electronic bulletin board.

(I) The Company will not disclose, condition or tie its agreements to release, assign or otherwise transfer interstate pipeline or other pipeline system capacity to any agreement by a gas supplier, customer or other third party relating to any service in which an affiliate is involved.

(j) ~~To the maximum extent practicable,~~ the Company's operating employees will function independently from the operating employees of its marketing affiliate, be employed by separate corporate entities, and reside in separate offices.

(k) The Company will keep separate books of accounts and records from those of its marketing affiliates. The Company's books must be available for review and inspection by the DPU and its Staff upon request.

(l) The Company will not communicate to any customer, supplier or third parties that any advantage may accrue to such customer, supplier or third party with respect to the Company's services as a result of that customer, supplier or third party dealing with the marketing affiliate. The Company will provide appropriate disclaimers if its marketing affiliate represents that it will receive preferential treatment from the Company.

(m) All complaints, whether written or verbal will be referred to the General Counsel, Boston Gas Company, One Beacon Street, 34th Floor, Boston, MA 02108. The General Counsel will acknowledge such complaint, verbally or in writing, within five working days of receipt. Within ~~30~~ five days of receipt of the complaint, the General Counsel will send to the complainant a detailed fact-based statement of the complaint that will include all relevant dates, companies involved, employees involved, and the specifics of the claim. Such statement will provide the results of a preliminary investigation of the complaint, and describe any cause of action to be taken. In the event the Company and the complainant are unable to resolve the complaint, the complainant may address the Complaint to the Department.

(n) The Company may not give its marketing affiliate preference over non-affiliated suppliers, or potential non-affiliated suppliers, in matters relating to the assignment, release, or other transfer of the Company's capacity rights on interstate or other pipeline systems.

(o) The Company must not give any preference to its marketing affiliate in the scheduling and allocation of capacity at the citygate stations.

(p) The Company may not prefer its affiliate with respect to matters relating to delivery of gas on its system including, but not limited to, administration of contracts; scheduling transactions; system curtailments; or application of nomination, balancing and standby tariffs.

(q) Any service provided by the Company to the affiliate will be available to any other customer, or marketer depending on the nature of the service, under similar terms, conditions, and pricing.

Record keeping and Reporting Requirements

To enable the Massachusetts Department of Public Utility (DPU) to determine whether the Company is complying with these standards and acting in a non-discriminatory manner, the Company must maintain records and file reports with the DPU as follows:

(a) The Company must maintain separate books of account and records from its affiliate. The Company's books must be available for review and inspection by the DPU and its Staff upon request.

(b) The Company must maintain a written log of all waivers granted with respect to tariff provisions that provide for discretionary waivers. The Company must make copies of the log available by fax to any person requesting it within 4 business-days of the request.

© The Company must not invoice its customers for services performed by its marketing affiliate(s).

(d) The Company must file a written report with the DPU on the 10th day of each month, identifying:

- all services performed by the Company in the previous month in which a marketing affiliate was involved, either as the supplier of the gas or otherwise.

- the interstate or other pipeline systems on which a marketing affiliate transported the natural gas to the Company's gate stations. For each transaction involving capacity obtained from the Company by an affiliate, the Company must identify:

  - the nature of the capacity (firm--primary point, firm--secondary point,interruptible, etc.); how the capacity was obtained; the price paid by the marketing affiliate for the interstate or other capacity; the gate station at which the Company received the volumes into its distribution system; the customer served by the marketing affiliate, the volumes purchased by the customer from the marketing affiliate, the delivery point(s); and any terms or conditions of the contract between the marketing affiliate and the customer that added value to the service.

- every instance in the previous month in which the Company failed to accept at a gate station volumes tendered by a supplier for receipt into the Company's system. The Company should identify its reason for declining the volumes, and state whether volumes tendered by other suppliers were accepted and why.

- every instance in which the Company imposed upon a marketing affiliate or any other supplier a penalty for non-delivery. The Company must refund annually an amount equal to all the Company's other customers on a *pro rata* basis.

(e) Whenever the Company agrees to grant an affiliated marketer a discount, rebate or fee waiver for delivery services, balancing, meters or meter installation, storage, standby service or any other service offered to shippers, the Company must notify the DPU of the charges agreed upon; the maximum charges that apply under the tariff; the time period for which the discount/rebate/fee waiver applies; the quantity of gas scheduled to be moved; the delivery points under the transaction; any conditions or requirements applicable to the discount/rebate/fee waiver; and the procedures by which a non-affiliated supplier can request a comparable offer.

Enforcement

Should the Company be found to have violated these standards of conduct or recordkeeping requirements, they will be subject to appropriate sanctions as determined by the DPU or any other entity having jurisdiction.

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